

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DANIEL NEKATALOV and NINA  
YAGUDAYEVA,

Civil Action No.:  
07-CV-6533

Plaintiffs,

-against-

**ANSWER**

**J. Berman**

JEFFERSON VALLEY MALL, JEFFERSON  
VALLEY MALL LIMITED PARTNERSHIP,  
M.S. MANAGEMENT ASSOCIATES, INC.,  
and SIMONS PROPERTY GROUP, INC.,

**M.J. Peck**

Defendants.

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Defendants, JEFFERSON VALLEY MALL LIMITED PARTNERSHIP,  
M.S. MANAGEMENT ASSOCIATES, INC. and SIMON PROPERTY GROUP, L.P.  
s/h/a SIMONS PROPERTY GROUP, INC. (hereinafter collectively  
referred to as "Defendants"), by their attorneys, SIMMONS,  
JANNACE & STAGG, L.L.P., as and for their Answer to the  
Complaint of plaintiffs, responds as follows:

1. Denies knowledge and information sufficient to form a  
belief as to the truth of the allegations contained in numbered  
paragraph "1" of the Complaint.

2. Denies knowledge and information sufficient to form a  
belief as to the truth of the allegations contained in numbered  
paragraph "2" of the Complaint.

3. Denies knowledge and information sufficient to form a  
belief as to the truth of the allegations contained in numbered

paragraph "3" of the Complaint.

4. Denies the allegations contained in numbered paragraph "4" of the Complaint.

5. Denies the allegations contained in numbered paragraph "5" of the Complaint.

6. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "6" of the Complaint.

7. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "7" of the Complaint.

8. Admits the allegations contained in numbered paragraph "8" of the Complaint.

9. Denies in the form alleged the allegations contained in numbered paragraph "9" of the Complaint and leaves all questions of law to the Court.

10. Denies in the form alleged the allegations contained in numbered paragraph "10" of the Complaint and leaves all questions of law to the Court.

11. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "11" of the Complaint.

12. Denies in the form alleged the allegations contained in numbered paragraph "12" of the Complaint and leaves all

questions of law to the Court.

13. Denies in the form alleged the allegations contained in numbered paragraph "13" of the Complaint and leaves all questions of law to the Court.

14. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "14" of the Complaint.

15. Denies in the form alleged the allegations contained in numbered paragraph "15" of the Complaint and leaves all questions of law to the Court.

16. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "16" of the Complaint.

17. Denies in the form alleged the allegations contained in numbered paragraph "17" of the Complaint and leave all questions of law to the Court.

18. Denies in the form alleged the allegations contained in numbered paragraph "18" of the Complaint and leave all questions of law to the Court.

19. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "19" of the Complaint.

20. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered

paragraph "20" of the Complaint.

21. Denies in the form alleged the allegations contained in numbered paragraph "21" of the Complaint and leave all questions of law to the Court.

22. Denies in the form alleged the allegations contained in numbered paragraph "22" of the Complaint and leave all questions of law to the Court.

23. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "23" of the Complaint.

24. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "24" of the Complaint.

25. Denies in the form alleged the allegations contained in numbered paragraph "25" of the Complaint and leave all questions of law to the Court.

26. Denies in the form alleged the allegations contained in numbered paragraph "26" of the Complaint and leave all questions of law to the Court.

27. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "27" of the Complaint.

28. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered

paragraph "28" of the Complaint.

29. Denies the allegations contained in numbered paragraph "29" of the Complaint.

30. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "30" of the Complaint.

31. Denies in the form alleged the allegations contained in numbered paragraph "31" of the Complaint and leave all questions of law to the Court.

32. Denies the allegations contained in numbered paragraph "32" of the Complaint.

33. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "33" of the Complaint.

34. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "34" of the Complaint.

35. Denies in the form alleged the allegations contained in numbered paragraph "35" of the Complaint and leave all questions of law to the Court.

36. Denies the allegations contained in numbered paragraph "36" of the Complaint.

37. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered

paragraph "37" of the Complaint.

38. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "38" of the Complaint.

39. Denies in the form alleged the allegations contained in numbered paragraph "39" of the Complaint and leave all questions of law to the Court.

40. Denies in the form alleged the allegations contained in numbered paragraph "40" of the Complaint and leave all questions of law to the Court.

41. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "41" of the Complaint.

42. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "42" of the Complaint.

43. Denies in the form alleged the allegations contained in numbered paragraph "43" of the Complaint and leave all questions of law to the Court.

44. Denies in the form alleged the allegations contained in numbered paragraph "44" of the Complaint and leave all questions of law to the Court.

45. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered

paragraph "45" of the Complaint.

46. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "46" of the Complaint.

47. Denies in the form alleged the allegations contained in numbered paragraph "47" of the Complaint and leave all questions of law to the Court.

48. Denies in the form alleged the allegations contained in numbered paragraph "48" of the Complaint and leave all questions of law to the Court.

49. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "49" of the Complaint.

50. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "50" of the Complaint.

51. Denies in the form alleged the allegations contained in numbered paragraph "51" of the Complaint and leave all questions of law to the Court.

52. Denies in the form alleged the allegations contained in numbered paragraph "52" of the Complaint and leave all questions of law to the Court.

53. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered

paragraph "53" of the Complaint.

54. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "54" of the Complaint.

55. Denies in the form alleged the allegations contained in numbered paragraph "55" of the Complaint and leave all questions of law to the Court.

56. Denies in the form alleged the allegations contained in numbered paragraph "56" of the Complaint and leave all questions of law to the Court.

57. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "57" of the Complaint.

58. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "58" of the Complaint.

59. Denies in the form alleged the allegations contained in numbered paragraph "59" of the Complaint and leave all questions of law to the Court.

60. Denies in the form alleged the allegations contained in numbered paragraph "60" of the Complaint and leave all questions of law to the Court.

61. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered



paragraph "61" of the Complaint.

62. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "62" of the Complaint.

63. Denies in the form alleged the allegations contained in numbered paragraph "63" of the Complaint and leave all questions of law to the Court.

64. Denies in the form alleged the allegations contained in numbered paragraph "64" of the Complaint and leave all questions of law to the Court.

65. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered paragraph "65" of the Complaint.

66. Denies the allegations contained in numbered paragraph "66" of the Complaint.

67. Denies the allegations contained in numbered paragraph "67" of the Complaint.

68. Denies the allegations contained in numbered paragraph "68" of the Complaint.

**AS AND FOR A SECOND CAUSE OF ACTION**

69. Defendants repeat and reallege the answers to paragraphs "1" to "68" as if fully set forth herein.

70. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in numbered

paragraph "70" of the Complaint.

71. Denies the allegations contained in numbered paragraph "71" of the Complaint.

72. Denies the allegations contained in numbered paragraph "72" of the Complaint.

73. Deny plaintiff is entitled to the relief requested in the "Wherefore Clause" of the complaint.

74. Defendants demand that liability, if any, be apportioned.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

75. Plaintiffs' complaint fails to state a cause of action.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

76. Upon information and belief, the injuries allegedly sustained by plaintiffs were not as a result of any culpable conduct by the Defendants herein, or in the alternative, the amount of damages otherwise recoverable shall be diminished in the percentage proportion of the culpable conduct of plaintiffs, which contributed to or caused plaintiffs' alleged injury.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

77. Upon information and belief, plaintiffs have not effectuated valid service, pursuant to the CPLR, and therefore, this Court lacks jurisdiction over the person of the Defendants.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

78. Upon information and belief, any damages sustained by plaintiffs were caused, in whole or in part, by the culpable conduct of plaintiffs and/or were aggravated by the culpable conduct of plaintiffs.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

79. If plaintiffs prove at trial the existence of a dangerous condition, all of which is denied, upon information and belief, any damages sustained by plaintiffs were caused by plaintiffs' having voluntarily and unreasonably assumed a known and dangerous risk, and/or the damages were caused by or aggravated by such conduct.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

80. Defendants will rely upon the provisions of Article 16 of the CPLR with regard to the limitation of joint and several liability.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

81. Upon information and belief, Defendants never received actual or constructive notice of any defective or dangerous condition, and therefore, it/they cannot be liable for any alleged injuries suffered by plaintiffs.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

82. Upon information and belief, if plaintiffs suffered any damages as alleged in the Complaint, such damages were as a result of an independent superseding act by a third party for

which Defendants cannot be held liable, and Defendants' conduct was in no way the proximate cause of such damages.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

83. If plaintiffs suffered damages as alleged, then plaintiffs failed to mitigate such damages.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

84. If plaintiffs herein have received remuneration and/or compensation for some or all of their claimed economic loss, or will with reasonable certainty receive remuneration and/or compensation for said loss in the future, Defendants are entitled to have plaintiffs' award, if any, reduced by the amount of said remuneration and/or compensation, pursuant to Section 4545(c) of the CPLR.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

85. Upon information and belief, any damages sustained by the plaintiffs were caused, in whole or in part, by an unavoidable accident, which was not intended and could not have been foreseen or prevented by the exercise of reasonable care.

**WHEREFORE**, for all of the foregoing reasons, it is respectfully requested that plaintiffs' Complaint be dismissed in its entirety, and that Defendants be awarded the costs and disbursements of this action, reasonable attorneys' fees, and such other and further relief as this Court may deem just and proper.

DATED: Syosset, New York  
September 14, 2007

Yours, etc.,

**SIMMONS, JANNACE & STAGG, L.L.P.**

BY: /S/Thomas E. Stagg

Thomas E. Stagg (ts-0663)

Attorneys for Defendants

JEFFERSON VALLEY MALL LIMITED PARTNERSHIP,  
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